

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-795
)	
SBA Towers, Inc.)	NAL/Acct. No.200332560007
Owner of Antenna Structure #1045818 near)	
Huntsdale, Missouri)	FRN 0005-7932-60
Boca Raton, Florida)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 3, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find SBA Towers, Inc. (“SBA”), owner of antenna structure #1045818, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Commission's Rules (“Rules”).¹ Specifically, we find SBA apparently liable for failure to clean and repaint its antenna structure to maintain good visibility.

II. BACKGROUND

2. On November 12, 2002, the antenna structure bearing FCC antenna structure registration (“ASR”) number 1045818 and located near Huntsdale, Missouri, was inspected by an agent of the Commission’s Kansas City Field Office (“Kansas City Office”). At the time of the inspection, black cabling on the outside of the structure covered the painted metal tower reducing visibility of the structure. The Commission’s ASR database showed this structure is registered to SBA.

3. On November 20, 2002, an agent of the Kansas City Office contacted SBA and spoke to two SBA representatives who confirmed that SBA owned the antenna structure with ASR number 1045818. Mr. Ed Roach, one of the SBA representatives, stated that they were aware of the painting problem and had just received the Federal Aviation Administration determination allowing them to change from painting to strobe lighting. In a follow-up conversation on November 22, 2002, Mr. Roach stated that the local government jurisdiction would not allow strobe lighting, and that SBA was in the process of hiring a firm to paint the structure.

III. DISCUSSION

4. Section 17.50 requires antenna structure owners to clean or repaint the structure as necessary

¹ 47 C.F.R. § 17.50.

to maintain good visibility. On November 12, 2002, and at least until November 22, 2002, SBA's antenna structure number 1045818 had black cabling on the tower face obscuring the structure's paint and causing the structure to have an overall dark appearance. As a result of the black cabling, the structure was not clearly visible.

5. Based on the evidence before us, we find SBA Towers, Inc. willfully² and repeatedly³ violated Section 17.50 of the Rules by failing to repaint its antenna structure as necessary to maintain good visibility.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for failure to comply with prescribed lighting and marking is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ SBA Towers, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Rules by failing to clean and repaint its antenna structure to maintain good visibility.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, SBA Towers, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to 5900 Broken Sound Parkway NW, Boca Raton, FL, 33487.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
Kansas City Office, Enforcement Bureau

Attachment

⁸ See 47 C.F.R. § 1.1914.